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RECENT LEGAL LITERATURE

THE LAW OF INNKEEPERS AND HOTELS, including other Public Houses, Theatres, Sleeping Cars. By Joseph Henry Beale, Jr., Bussey Professor of Law in Harvard University. Boston: William J. Nagel, 1906, pp. xviii, 621.

The growth of the law, in bulk at least, is strikingly brought out by a comparison of the present work with the great work on Bailments of Mr. JUSTICE STORY. The present work on Innkeepers is practically equal in volume to STORY'S whole treatise on Bailments (in which the subject of Innkeepers occupied less than a twentieth part). STORY cites less than 900 cases on the whole subject of Bailments, while BEALE cites more than 2,000 on Innkeepers. Of the present work, however, 228 pages are given to an appendix containing statutes of the various states regulating inns and other public houses and the rights of innkeepers and guests, a very useful compilation. The author takes issue with JUSTICE STORY and all later writers on Bailments for following SIR WILLIAM JONES in classing the innkeeping relation as a bailment, and for two reasons. First, because he regards it as more natural to approach the subject as a development and application of public-service law, and to rest the responsibility of the innkeeper rather upon his public undertaking than upon his position as bailee; and second, because "the crucial test of bailment, delivery of possession to the bailee, is lacking." There is much force in the first suggestion, though it applies equally to the common carrier who has always been classed as a bailee The modern development of public-service law perhaps calls for new lines of division, and yet the general principles of bailments must be brought over to the new subject, for a common carrier is still a bailee, a bailee and more, and so it is believed is the innkeeper. And this leads us to say that the second reason for excluding the subject of innkeepers from a treatise on bailments savors more of refinement of logic than of practical classification. It is readily granted that the innkeeper does not have the the same sort of delivery of possession as some bailees, but neither does the safe-deposit company (referred to in the cases, though not in all texts, as a bailee), nor the carrier, as to the hand baggage and wearing apparel of the passenger, nor the liveryman as to a horse which the owner takes out at will. Some of the guest's goods are manually delivered to the innkeeper as fully as goods are delivered to any bailee, but he may be equally liable for goods not so delivered if they are *infra hospitium*. In this case, however, the "goods must be within the general control of the innkeeper," as the author himself says, i. e., there must be at least a sort of delivery, though not as complete as in some other cases. Almost every right, duty, and liability of the innkeeper for the guest's goods finds its perfect counterpart in the law of bailments and carriers, and it seems very natural to treat the subject in such a work. In no other field of the law does the subject seem so naturally at home, though there is certainly nothing to criticise in approaching the subject from the side of its public-service feature, as the author has very successfully done in the present

work. With reference to the guest himself the innkeeper is not, of course, a bailee, nor a carrier, but the position is analagous to that of a carrier of passengers, a further reason for treating of the innkeeper in a work on bailments and carriers.

The author adopts the view that no one is an innkeeper who does not supply all the needs of the traveller, "which in lowest terms is food, shelter and protection." One who does not furnish each of these "is not a common innkeeper." Doubtless that was once the case, and more than that, the innkeeper was required to care not only for the traveller, but for his beast as well. But the ways of the travelling public have changed, and the "definitions which have heretofore prevailed must also be changed and modified." This the author does not deny, and he approves the late case of *Johnson* v. *Chadbourn Finance Co.*, 89 Minn. 310 (1903), which held a place to be an inn where food was not furnished by the innkeeper, though it might be secured by such guests as desired at a restaurant kept by another person in the same building. Suppose this independent restaurant keeper ceases to do business, can any good reason be offered for changing on that account the responsibility of this keeper of a "European Hotel" in the same building. Do not all the reasons that call for the extraordinary liability of the keeper of a "European Hotel" which is provided with a café equally call for such liability when the café moves out? In other words, under modern conditions, is not one who holds himself out to furnish lodging for transients for hire an innkeeper, and subject to his liability? That is, perhaps, a question still to be determined.

The author, further, approves of the rule that a sleeping car is not an inn, but for a different reason than that usually assigned, viz., because the inn affords the traveller accommodation while he rests from his journey, the sleeping car while he continues his journey. If the law is to keep pace with modern progress it would seem it should follow with its protection the sleeping transient even though nowadays progress enables him to hire a bed on wheels. The reasons for protection are the same. The author mentions the other most familiar objections found in the cases to calling a sleeping car an inn, but (in *Pullman Palace Car Co.* v. *Lowe,* 28 Neb. 239) they have all been conclusively answered except three: the sleeping car does not furnish food, the rule of the innkeeper's liability is a harsh one and should not be extended, and the decisions are almost unanimous in holding that the sleeping car is not an inn. We have already raised the question whether the first objection is sound, many courts deny that there is any force in the second, but the third seems to settle the matter. The courts have spoken, and probably only legislation can change so unanimous a conclusion. It is submitted, however, that the principal difference between the modern compartment sleeper and the inn is that the sleeper is on wheels. Should that affect the question of legal liability? Perhaps it is enough to end discussion that the courts have found a difference.

The book is very satisfactory in its use of the history of the innkeeping relation, as throwing light upon the present state of the law. The discussions of controverted points and of important cases are full and most suggestive.

If we cannot with the author regard the innkeeper as out of place in a text on bailments, we may recognize the advantage of his point of approach in that it enables him to consider with innkeepers other public or quasi-public houses such as the boarding house, the restaurant, the theatre, lodging and bath houses and sleeping cars. This brings together in a single volume considerable matter not hitherto adequately treated. Altogether the book is a very readable, usable and desirable work, and fills a want not hitherto met, which is more than can be said of many very good books that have recently sought entrance to fields already well occupied. E. C. G.

THE LAW OF RAILROAD RATE REGULATION, with special reference to American Legislation. By Joseph Henry Beale, Jr., Bussey Professor of Law in Harvard University, and Bruce Wyman, Assistant Professor of Law in Harvard University. Boston: William J. Nagel, 1906, pp. lii, 1285.

In a sense, the appearance of this work is most timely; in another sense it appears before its time. At the present moment any contribution to the subject of rates is likely to be read with avidity. The subject has never so completely occupied the center of attention as just now. On the other hand no legal text-book on the subject written in the midst of revolutionary statutory changes can be of more than temporary value as an authority on anything except the history of the subject and its few basic principles. Decisions on the Railroad Rate Act of 1906 we have of course none, but we are certain to have enough in the immediate future, and there is reason to suppose they must be given prominent consideration by one who would be intelligent five years hence, or even less, on the law of railroad rate regulation. It may be that the appearance at this time of the present work will give it a distinct advantage when a second edition appears, for it is certain that a second edition will be needed before the first has much opportunity to obtain recognition.

But the work is more comprehensive than its title might suggest. Opening with a historical introduction, the authors consider the chief characteristics of common carriers and their primary duties in Book I, the limitation of charges and prevention of discrimination in accordance with common law principles in Book II, regulation of rates by American statutes and the validity of such statutes in Book III, and Interstate Commerce Commission rules of practice, forms of proceedings and legislation in an appendix. This, as will be seen, covers much matter not directly connected with rate regulation, as well as the primary principles out of which rate legislation has developed. A large number of cases are cited, but relatively to the size of the book the number is small, so that footnotes occupy but little space. That so many pages should be devoted to a discussion of this small division of the subject of railroads is suggestive of the growth of railroad law. In STORY'S classic work on Bailments and Carriers common carriers occupied a comparatively insignificant portion, and railroads were of course almost unthought of at that day. There was no "railroad law," as such. The law of common carriers developed so rapidly as to demand its separate volume more than 30 years ago, and now this single volume in an edition about to be pub-